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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 PETER T. H., an Individual,

Case No.: 2:18-10680 ADS

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, Commissioner of  
Social Security,

MEMORANDUM OPINION AND ORDER  
OF REMAND

15 Defendant.  
16

17 **I. INTRODUCTION**

18 Plaintiff Peter T. H.<sup>1</sup> (“Plaintiff”) challenges Defendant Andrew M. Saul<sup>2</sup>,  
19 Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial  
20 of his application for a period of disability and disability insurance benefits (“DIB”). For  
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22 <sup>1</sup> Plaintiff’s name has been partially redacted in compliance with Federal Rule of Civil  
23 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court  
Administration and Case Management of the Judicial Conference of the United States.

24 <sup>2</sup> On June 17, 2019, Saul became the Commissioner of Social Security. Thus, he is  
automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 the reasons stated below, the decision of the Commissioner is REVERSED and  
2 REMANDED.

3 **II. FACTS RELEVANT TO THE APPEAL**

4 A review of the entire record reflects certain uncontested facts relevant to this  
5 appeal. Prior to filing his application for social security benefits, Plaintiff worked for 21  
6 years as a pressman for the Los Angeles Times until April 2010, when he was laid off  
7 during a downsizing. (Administrative Record “AR” 46, 63, 211-12). Plaintiff alleges his  
8 medical condition became severe enough to keep him from working on January 1, 2013,  
9 the alleged disability onset date. (AR 15, 185, 211). He alleged disability based on the  
10 effects of major depressive disorder, diabetes with peripheral neuropathy, bulging  
11 lumbar disc, levoscoliosis, and pain in his back, hip, leg, knee, foot, and joints. (AR 60,  
12 64, 66, 211, 236, 242, 245, 260).

13 On June 3, 2015, Plaintiff’s wife completed a “FUNCTION REPORT – ADULT –  
14 THIRD PARTY” provided by the Agency. (AR 220-27). The form required her to  
15 provide detailed information about her personal observations of Plaintiff’s: (1) illnesses,  
16 injuries, and conditions; (2) daily activities; and (3) abilities. (*Id.*) She indicated that  
17 she has known Plaintiff for 35 years and spends about 15 hours a day with him. (AR  
18 220). She stated that Plaintiff lacks energy, focus, and concentration as a result of his  
19 depression. (AR 220-24). It also affects his sleep, and he has nightmares and fears the  
20 dark. (AR 221). He sometimes needs reminders and encouragement to take his  
21 medication or go places. (AR 222, 224). He is slower with tasks, and he can’t finish  
22 what he starts. (AR 222, 224-25). Since the onset of his depression, he no longer has  
23 any hobbies or interests except watching television. (AR 224-25). He also has mood  
24 swings and is paranoid. (AR 225-26). His condition has also affected his memory, self-

1 esteem, and his ability to concentrate, understand, follow instructions, and get along  
2 with others. (Id.). He has difficulties handling stress and changes to his routine. (AR  
3 226). His medications cause side effects such as dizziness, severe headaches, and  
4 “blurriness.” (AR 227).

5 Plaintiff, 61 years old at the time of the administrative hearing, testified about his  
6 prior work experience, and his physical and mental limitations. (AR 45-82, 95).

7 Plaintiff’s wife waited outside the courtroom while Plaintiff testified. (AR 81). When  
8 she was called, she provided additional testimony about Plaintiff’s condition. She said  
9 that since 2013 or 2014 Plaintiff became “very depressed” and “always sad.” (AR 83-84,  
10 86). She explained how he used to fish and exercise, but he no longer has an interest in  
11 those or other activities. (AR 83). She stated that, since the onset of his conditions, he  
12 lacks hygiene, including showering less frequently, not shaving, and dressing messily.  
13 (AR 83, 86). He has lost his interest in life. (AR 84). His depression has also affected  
14 her and their marriage. (Id.). Physically, his hips and back cause him a lot of problems.  
15 (AR 85). He cannot sit very long before his back hurts. (Id.). His pain has affected his  
16 sexual ability, which furthers his depression. (Id.). Plaintiff also became suicidal. (AR  
17 86). He used to visit her when she was in the hospital for an organ transplant, but he  
18 had difficulty sitting. (AR 67, 86-87). Plaintiff used to walk, but he doesn’t do that,  
19 either. (AR 87). His diabetes causes problems in his feet, such as a “pins and needles”  
20 burning feeling. (Id.).

### 21 **III. PROCEEDINGS BELOW**

#### 22 **A. Procedural History**

23 Plaintiff filed a claim for Title II social security benefits on March 23, 2015,  
24 alleging disability beginning January 1, 2013. (AR 13, 183, 211). Plaintiff’s DIB

1 application was denied initially on October 28, 2015 (AR 112-13), and upon  
2 reconsideration on March 30, 2016 (AR 122-25). A hearing was held before ALJ Diana  
3 J. Coburn on August 28, 2017. (AR 35-96). Plaintiff appeared and was represented by  
4 an attorney at the hearing. (AR 35, 38-44, 94-95). As mentioned, Plaintiff testified (AR  
5 45-82), as did his wife (AR 83-88), as well as vocational expert Gregory Jones (AR 88-  
6 94).

7 On January 23, 2018, the ALJ found that Plaintiff was “not disabled” within the  
8 meaning of the Social Security Act (“SSA”).<sup>3</sup> (AR 15-29). The ALJ’s decision became the  
9 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request for  
10 review on November 23, 2018. (AR 1-6). Plaintiff then filed this action in District Court  
11 on December 27, 2018, challenging the ALJ’s decision. [Docket (“Dkt.”) No. 1].

12 On May 9, 2019, Defendant filed an Answer, as well as a copy of the Certified  
13 Administrative Record. [Dkt. Nos. 16, 17]. The parties filed a Joint Stipulation on  
14 August 13, 2019. [Dkt. No. 20]. The case is ready for decision.<sup>4</sup>

### 15 **B. Summary of ALJ Decision After Hearing**

16 In the ALJ’s decision of January 23, 2018 (AR 15-29), the ALJ followed the  
17 required five-step sequential evaluation process to assess whether Plaintiff was disabled  
18 under the SSA.<sup>5</sup> 20 C.F.R. § 404.1520(a)(4). At **step one**, the ALJ found that Plaintiff

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20 <sup>3</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they are  
21 unable to engage in any substantial gainful activity owing to a physical or mental  
22 impairment expected to result in death, or which has lasted or is expected to last for a  
23 continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

24 <sup>4</sup> The parties filed consents to proceed before the undersigned United States Magistrate  
Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.  
11, 12].

<sup>5</sup> The ALJ follows a five-step sequential evaluation process to assess whether a claimant  
is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the  
claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant

1 had not been engaged in substantial gainful activity during the period from his alleged  
2 onset date of January 1, 2013, through the date he last met the insured-status  
3 requirements of the SSA, December 31, 2015. (AR 17). At **step two**, the ALJ found that  
4 Plaintiff had the following severe impairments: (a) diabetes mellitus with neuropathy;  
5 (b) lumbar spine bulging discs; (c) depression; and (d) obesity. (AR 18). At **step three**,  
6 the ALJ found that Plaintiff, through the date he was last insured “did not have an  
7 impairment or combination of impairments that met or medically equaled the severity  
8 of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR  
9 404.1520(d), 404.1525[,] and 404.1526).” (AR 18-20).

10 The ALJ then found that Plaintiff had the Residual Functional Capacity (“RFC”)<sup>6</sup>  
11 to perform medium work as defined in 20 C.F.R. § 404.1567(c)<sup>7</sup> except:

12 he has the frequent ability to walk on uneven terrain, climb ladders,  
13 and work at heights; and he is limited to simple work-related  
14 decisions and simple, routine tasks with frequent contact with the  
15 general public.

16 (AR 20).

17 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not  
18 disabled is appropriate. Step three: Does the claimant’s impairment or combination of  
19 impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?  
20 If so, the claimant is automatically determined disabled. If not, proceed to step four.  
21 Step four: Is the claimant capable of performing his past work? If so, the claimant is not  
22 disabled. If not, proceed to step five. Step five: Does the claimant have the residual  
23 functional capacity to perform any other work? If so, the claimant is not disabled. If  
24 not, the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995)  
(citing 20 C.F.R. §404.1520).

<sup>6</sup> An RFC is what a claimant can still do despite existing exertional and nonexertional  
limitations. See 20 C.F.R. § 404.1545(a)(1).

<sup>7</sup> “Medium work involves lifting no more than 50 pounds at a time with frequent lifting  
or carrying of objects weighing up to 25 pounds. If someone can do medium work . . . he  
or she can also do sedentary and light work.” 20 C.F.R. § 404.1567(c); see also Manzo v.  
Berryhill, 2018 WL 5099264, at \*4 (C.D. Cal. Oct. 17, 2018).

1 At **step four**, based on Plaintiff's RFC, vocational background, and the  
2 vocational expert's testimony, the ALJ found that Plaintiff was unable to perform his  
3 past relevant work as a press operator, color control operator, or inker. (AR 26-27).

4 At **step five**, the ALJ found that Plaintiff was "an individual of advanced age," he  
5 has at least a high school education, and can communicate in English. (AR 27). The  
6 ALJ further found that, "[c]onsidering the [Plaintiff]'s age, education, work experience,  
7 and [RFC], there were jobs that existed in significant numbers in the national economy  
8 that [Plaintiff] could have performed[.]" (*Id.*). The ALJ accepted the vocational expert's  
9 testimony that Plaintiff would be able to perform the representative occupations of:  
10 Hand Packager (Dictionary of Occupational Titles ("DOT") 920.587-018); Laundry  
11 Labeler (DOT 361.687-018); and Industrial Cleaner (DOT 381-687-018). (AR 28). As  
12 such, the ALJ found that Plaintiff was "not disabled," as defined in the SSA, at any time  
13 from January 1, 2013, through December 31, 2015. (*Id.*)

#### 14 **IV. ANALYSIS**

##### 15 **A. Issues on Appeal**

16 Plaintiff raises three issues for review, whether the ALJ correctly evaluated:  
17 (1) Plaintiff's wife's testimony; (2) Plaintiff's testimony; and (3) the medical evidence.  
18 [Dkt. No. 20 (Joint Stipulation), p. 3]<sup>8</sup>. For the reasons below, the Court agrees with  
19 Plaintiff regarding the ALJ's failure to properly consider his wife's third-party  
20 testimony, and remands on that ground.

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24 <sup>8</sup> The Court reorders the issues as presented by the parties.

1           **B. Standard of Review**

2           A United States District Court may review the Commissioner's decision to deny  
3 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but  
4 is confined to ascertaining by the record before it if the Commissioner's decision is  
5 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)  
6 (District Court's review is limited to only grounds relied upon by ALJ) (citing Connett v.  
7 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ's findings of  
8 fact if they are supported by substantial evidence and if the proper legal standards were  
9 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). An ALJ can satisfy  
10 the substantial evidence requirement "by setting out a detailed and thorough summary  
11 of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and  
12 making findings." Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (citation  
13 omitted).

14           "[T]he Commissioner's decision cannot be affirmed simply by isolating a specific  
15 quantum of supporting evidence. Rather, a court must consider the record as a whole,  
16 weighing both evidence that supports and evidence that detracts from the Secretary's  
17 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and  
18 internal quotation marks omitted). "Where evidence is susceptible to more than one  
19 rational interpretation,' the ALJ's decision should be upheld." Ryan v. Comm'r of Soc.  
20 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679  
21 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) ("If  
22 the evidence can support either affirming or reversing the ALJ's conclusion, we may not  
23 substitute our judgment for that of the ALJ."). However, the Court may review only "the  
24 reasons provided by the ALJ in the disability determination and may not affirm the ALJ

1 on a ground upon which [s]he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.  
2 2007) (citation omitted).

3 **C. The ALJ Failed to Properly Consider the Third-Party Testimony**  
4 **and Statements of Record**

5 Plaintiff asserts that the ALJ improperly evaluated and discounted the testimony  
6 of his wife. [Dkt. No. 20, pp. 30-35]. Defendant contends that the ALJ appropriately  
7 discounted the testimony, and even if there was error, it was harmless because it was  
8 similar to Plaintiff’s properly rejected subjective complaints. [Dkt. No. 20, pp. 33-34].

9 **1. Legal Standard for Evaluating Third-Party Testimony**

10 “In determining whether a claimant is disabled, an ALJ must consider lay witness  
11 testimony concerning a claimant’s ability to work.” Bruce v. Astrue, 557 F.3d 1113, 1115  
12 (9th Cir. 2009) (quoting Stout v. Comm’r Soc. Sec. Admin., 454 F.3d 1050, 1053 (9th  
13 Cir. 2006)); see also 20 C.F.R. § 404.1513(a)(4). Friends and family members in a  
14 position to observe symptoms and activities are competent to testify as to a claimant’s  
15 condition. See Diedrich v. Berryhill, 874 F.3d 634, 640 (9th Cir. 2017). Such testimony  
16 “cannot be disregarded without comment.” Bruce, 557 F.3d at 1115 (quoting Nguyen v.  
17 Chater, 100 F.3d 1462, 1467 (9th Cir. 1996)); Robbins, 466 F.3d at 885 (“[T]he ALJ is  
18 required to account for all lay witness testimony in the discussion of his or her  
19 findings.”). When rejecting lay witness testimony, an ALJ must give specific reasons  
20 germane for discounting the testimony. Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d  
21 685, 694 (9th Cir. 2009).



1                   2. The ALJ Failed to Provide Germain Reasons for Discounting the Third-  
2                   Party Function Report and Testimony.

3                   Having carefully reviewed the record, the Court finds that the ALJ failed to  
4                   articulate specific reasons germane for discounting the third-party function report and  
5                   testimony. The ALJ provided a terse summary of Plaintiff's wife's third-party function  
6                   report and her testimony (AR 20-21, 26), and then discounted it for the following  
7                   reasons:

8                   While a layperson can offer an opinion on the severity of the claimant's  
9                   symptoms in relationship to the claimant's ability to work, the opinion of a  
10                  layperson is far less persuasive on those same issues than are the opinions  
11                  of medical professionals as relied on herein. Thus, I have given [Plaintiff's  
12                  wife's] statements only partial weight. I considered her statements about  
13                  [Plaintiff's] limitations and adopted appropriate restrictions in the [RFC]  
14                  herein. However, [Plaintiff's wife's] assertions regarding [Plaintiff's]  
15                  limitations are not persuasive of additional limitations in the [RFC] as  
16                  they are inconsistent with [Plaintiff's] conservative treatment records,  
17                  mild clinical findings, and normal activities of daily living.

18                  (AR 26).

19                  First, the ALJ's reasoning that Plaintiff's wife's lay opinion was "far less"  
20                  persuasive than the opinions of the medical professionals, is legally deficient.<sup>9</sup> (AR 26).  
21                  As mentioned, friends and family members who are in a position to observe a claimant's  
22                  symptoms and daily activities are deemed to be competent to testify as to those  
23                  symptoms and activities. See Diedrich, 874 F.3d at 640; Dodrill v. Shalala, 12 F.3d 915,  
24                  919-19 (9th Cir. 1993). Third parties need not have medical training, and their

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25                  <sup>9</sup> Notably, the Commissioner does not address this reason, or respond to Plaintiff's  
26                  argument regarding it. See, e.g., Kinley v. Astrue, 2013 WL 494122, at \*3 (S.D. Ind. Feb.  
27                  8, 2013) ("The Commissioner does not respond to this [aspect of claimant's] argument,  
28                  and it is unclear whether this is a tacit admission by the Commissioner that the ALJ  
29                  erred or whether it was an oversight. Either way, the Commissioner has waived any  
30                  response.").

1 statements do not contain diagnosis or medical findings because the very purpose of  
2 third-party testimony is to obtain the lay witness's subjective impression of claimant's  
3 abilities and limitations. Thus, the ALJ improperly discounted the statements for this  
4 reason. See Dallas v. Comm'r Soc. Sec. Admin., 2017 WL 4242028, at \*5 (D. Ariz. Sept.  
5 25, 2017) (ALJ improperly disregarded function report because third party was not a  
6 doctor trained to make observations about claimant's limitations); Augg v. Colvin, 2016  
7 WL 1388054, at \*5 (W.D. Wash. Apr. 8, 2016) ("There is no requirement that a lay  
8 witness be 'medically trained to make exacting observations.' Nor should there be given  
9 that lay witnesses are by definition not medical professionals."); Earhart v. Colvin, 2015  
10 WL 2368597, at \*4 (D. Or. May 18, 2015) (noting Commissioner's concession that third-  
11 party's lack of medical training was not a valid reason for rejecting testimony).

12 Second, the ALJ's conclusion that Plaintiff's wife's assertions are inconsistent  
13 with Plaintiff's treatment records, clinical findings, and activities of daily living, is also  
14 inadequate. (AR 26). The ALJ failed to identify which testimony she found not credible,  
15 and explain which treatment records, which clinical findings, or which daily activities  
16 were allegedly inconsistent with that testimony. See Brown-Hunter v. Colvin, 806 F.3d  
17 487, 494 (9th Cir. 2015) (as amended) (ALJ must identify "which testimony she found  
18 not credible, and . . . explain[] which evidence contradicted that testimony." (emphasis  
19 in original)); Burrell v. Colvin, 775 F.3d 1133, 1138 (9th Cir. 2014) (an ALJ must  
20 "elaborate on which daily activities conflicted with which part of [the] testimony"  
21 (emphasis in original)). This catch-all, without further specificity, is insufficient for  
22 review. See Brown-Hunter, 806 F.3d at 492 (federal courts "demand that the agency set  
23 forth the reasoning behind its decisions in a way that allows for meaningful review");  
24 Blakes v. Barnhart, 331 F.3d 565, 569 (7th Cir. 2003) (citations omitted) ("We require

1 the ALJ to build an accurate and logical bridge from the evidence to her conclusions so  
2 that we may afford the claimant meaningful review of the SSA's ultimate findings.”).

3 Moreover, a lack of support from the treatment records or clinical findings is not  
4 a proper basis for disregarding lay witness observations. Diedrich, 874 F.3d at 640  
5 (quoting Bruce, 557 F.3d at 1116 (“Nor under our law could the ALJ discredit [the  
6 witness’s] lay testimony as not supported by medical evidence in the record.”)). That lay  
7 testimony and third-party function reports may differ from medical records alone “is  
8 precisely why such evidence is valuable at a hearing.” Diedrich, 874 F.3d at 640;  
9 Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996) (ALJ erred by rejecting testimony  
10 of claimant’s family members about claimant’s symptoms because medical records did  
11 not corroborate those symptoms); Bray v. Berryhill, 2018 WL 3076919, at \*9 (C.D. Cal.  
12 June 19, 2018) (“[T]o the extent the ALJ determined that the [third-party function  
13 r]eport should be discounted based on a lack of support from the medical records, this  
14 was not a germane reason to give ‘little weight’ to [friend’s] observations.”).

15 Finally, the ALJ failed to make requisite findings as to the application of any of  
16 Plaintiff’s daily activities to the work setting. See Martinez v. Berryhill, 721 F. App’x 597,  
17 600 (9th Cir. 2017) (ALJ improperly discounted testimony “based on [claimant’s] daily  
18 activities . . . [without] support[ing] the conclusions as to the frequency of those  
19 activities or their transferability to the workplace.”); Orn, 495 F.3d at 630 (ALJ must  
20 make “specific findings related to [the daily] activities and their transferability to  
21 conclude that a claimant’s daily activities warrant an adverse credibility  
22 determination”).

23 The Commissioner’s assertion of harmless error does not save the ALJ’s decision.  
24 The Commissioner contends that Plaintiff’s wife’s testimony was similar to Plaintiff’s

1 testimony, and therefore should be rejected for the same reasons she discounted  
2 Plaintiff's testimony. [Dkt. No. 20, p. 34]. But the ALJ made no such finding. (AR 26).  
3 See Garrison, 759 F.3d at 1010 (court "review[s] only the reasons provided by the ALJ in  
4 the disability determination and may not affirm the ALJ on a ground upon which [s]he  
5 did not rely"); Orn, 495 F.3d at 630. Notably, while the ALJ stated earlier in the  
6 decision that Plaintiff's written submissions "mirror[ed] the subjective complaints from  
7 [his] testimony," the ALJ made no similar finding that Plaintiff's wife's third-party  
8 function report or testimony "mirrored" or "parroted" Plaintiff's subjective complaints.  
9 AR 21. Thus, the Court declines to find the errors in this case harmless. See Molina v.  
10 Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012); Stephens v. Colvin, 2014 WL 6982680, at \*7  
11 (N.D. Cal. Dec. 9, 2014) (ALJ may "reject lay witness testimony only with express  
12 reference to reasons already put forth to reject similar testimony and tying the reasoning  
13 of their credibility determinations to the particular witnesses whose testimony they  
14 reject." (internal quotation marks, citation, and alteration omitted)).

15 Accordingly, the ALJ did not rely on specific germane reasons supported by  
16 substantial evidence to discount Plaintiff's wife's statements of record. The ALJ's  
17 decision lacks any "meaningful explanation" based on specific evidence in the record for  
18 rejecting her observations and statements of Plaintiff's condition. See, e.g., Brown-  
19 Hunter, 806 F.3d at 492. Because of the significant functional limitations reflected in  
20 the third-party function report and hearing testimony, the Court cannot confidently  
21 conclude that no reasonable ALJ, when fully crediting Plaintiff's wife, could have  
22 reached a different disability determination. Stout, 454 F.3d at 1055-56; Stephens, 2014  
23 WL 6982680 at \*7 (improper rejection of third-party testimony not harmless because, if  
24 credited, it could support a finding that claimant is disabled).

1           **D.     The Court Declines to Address Plaintiff's Remaining Arguments**

2           Having found that remand is warranted, the Court declines to address Plaintiff's  
3 remaining arguments. See Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir. 2012)  
4 ("Because we remand the case to the ALJ for the reasons stated, we decline to reach  
5 [plaintiff's] alternative ground for remand."); see also Alderman v. Colvin, 2015 WL  
6 12661933, at \*8 (E.D. Wash. Jan. 14, 2015) (remanding in light of interrelated nature of  
7 ALJ's decision to discount claimant's credibility and give appropriate consideration to  
8 physician's opinions, step-two findings, and step-five analysis); Augustine ex rel.  
9 Ramirez v. Astrue, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) ("[The] Court need  
10 not address the other claims plaintiff raises, none of which would provide plaintiff with  
11 any further relief than granted, and all of which can be addressed on remand.").  
12 Because it is unclear, in light of these issues, whether Plaintiff is in fact disabled, remand  
13 here is on an "open record." See Brown-Hunter, 806 F.3d at 495; Bunnell v. Barnhart,  
14 336 F.3d 1112, 1115-16 (9th Cir. 2003). The parties may freely take up all issues raised in  
15 the Joint Stipulation, and any other issues relevant to resolving Plaintiff's claim of  
16 disability, before the ALJ.

17           **E.     Remand For Further Administrative Proceedings**

18           Remand for further administrative proceedings, rather than an award of benefits,  
19 is warranted here because further administrative review could remedy the ALJ's errors.  
20 See Brown-Hunter, 806 F.3d at 495 (remanding for an award of benefits is appropriate  
21 in rare circumstances). On remand, the ALJ shall properly review and evaluate the  
22 third-party evidence in conjunction with Plaintiff's testimony and reassess Plaintiff's  
23 RFC. The ALJ shall then proceed through steps four and five, if necessary, to determine  
24 what work, if any, Plaintiff is capable of performing.

1 **V. ORDER**

2 IT IS ORDERED that Judgment shall be entered REVERSING the decision of the  
3 Commissioner denying benefits, and REMANDING the matter for further proceedings  
4 consistent with this Order. Judgement shall be entered accordingly.

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6 DATE: March 24, 2020

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8 /s/ Autumn D. Spaeth  
9 THE HONORABLE AUTUMN D. SPAETH  
10 United States Magistrate Judge  
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